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April 12, 1996

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APR 15 1996

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

BY HAND

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

Re: Permissible Ex Parte Presentation in
PR Docket No. 95-157

Dear Mr. Caton:

Pursuant to Section 1.1206 of the Commission's rules, this is to inform the Commission that the undersigned met today with David Siddall, Legal Advisor to Commissioner Susan Ness, to discuss the views of public safety microwave incumbents regarding the above-captioned proceeding, as set forth in the comments and reply comments of the Association of Public-Safety Communications Official-International, Inc. ("APCO").

Please contact the undersigned if you have any questions.

Respectfully submitted,

WILKES, ARTIS, HEDRICK & LANE
Chartered

By:


Robert M. Gurss

Attorneys for the Association of
Public-Safety Communications
Officials-International, Inc.

cc: David Siddall, Esquire

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

April 15, 1996

Michele Farquhar, Chief
Wireless Telecommunications Bureau
Federal Communications Commission
Washington, D.C. 20554

In re: WT Docket No. 95-157
Written Ex Parte Communication

Dear Ms. Farquhar:

This letter is written on behalf of AT&T Wireless PCS, Inc., Bell South Personal Communications, DCR Communications, GTE Mobilnet, Pacific Bell Mobile Services, PCS PrimeCo, L.P. and Western PCS Corporation all of whom hold A or B block broadband PCS licenses or are bidding for C block PCS licenses and all of whom are currently or will soon be in the process of relocating microwave incumbents pursuant to procedures adopted in the ET Docket No. 92-9. In the context of the above-referenced proceeding, the Commission seeks comment on, among other things, whether to clarify certain aspects of the microwave relocation rules.

As you are aware, the Commission has adopted a voluntary negotiation period (during which premium payments can be made and during which the incumbent has no obligation to negotiate with a PCS licensee) and a mandatory negotiation period (during which there is an obligation to negotiate). Although it seems clear that the Commission intended that the spectrum allocated for broadband PCS licenses be fully available for the deployment of PCS systems at the conclusion of the mandatory negotiation period, we believe the Commission's rules are vague with respect to procedures to be followed at the end of the mandatory negotiation period. We request that the Commission clarify its intention that microwave incumbents vacate the spectrum at the conclusion of the mandatory period, regardless of the status of relocation negotiations at that point. Otherwise, microwave incumbents could extend their use of PCS spectrum beyond the conclusion of the mandatory period and indefinitely delay the deployment of PCS services.

To the extent relocation agreements are not reached during the voluntary or

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mandatory negotiation periods, a PCS licensee can request "involuntary relocation" which is described as follows:

Should the parties fail to reach an agreement during the mandatory negotiation period, the emerging technology provider may request involuntary relocation of the existing facility and, in such a case, the emerging technology provider is only required to:

- (1) Guarantee payment of all costs of relocating the incumbent to a comparable facility. Relocation costs include all engineering, equipment, site costs and FCC fees, as well as any reasonable additional costs.
- (2) Complete all activities necessary for placing the new facilities into operation, including engineering and frequency coordination.
- (3) Build and test the new microwave (or alternative) system¹

Without further refinement from the Commission, the involuntary relocation process may extend the overall relocation process well beyond the 3 year period during which relocation should be accomplished.² In order to create the proper incentive for the parties to reach mutually satisfactory relocation agreements by the end of the voluntary/mandatory negotiation period, the Commission should clarify that the end of the mandatory negotiation period is not the start of a third negotiation period.

There are a number of problems with the "involuntary relocation" procedures. First, it is not clear if the parties have to agree on what constitutes an adequate replacement system. Second it is not clear if the parties have to agree on the costs of relocation or on a determination of comparability of new facilities. Third, it is not clear in what time frame this must be done. Fourth, and most importantly, it is our view that these procedures will (a) unduly delay the relocation of fixed microwave systems which are critical to the rapid deployment of broadband PCS systems and (b) create incentives for some fixed microwave licensees to continue to fail to bargain in good faith throughout the mandatory negotiation period.

¹ Amendment to the Commission's Plans Regarding a Plan for Sharing the Costs of Microwave Relocation, Notice of Proposed Rulemaking, WT Docket No. 95-157 at ¶ 7 (released Oct. 13, 1995).

² Reference to the 3 year voluntary/mandatory negotiation period also includes the expanded 5 year voluntary/mandatory negotiation period to the extent the microwave incumbent qualifies as a public safety entity.

If a relocation agreement is not reached prior to the expiration of the voluntary/mandatory negotiation period, the Commission should clarify that incumbent microwave licensees are required to complete the relocation process and vacate the 2 GHz frequencies by no later than the end of the mandatory negotiation period. In the alternative, the Commission should automatically convert the licenses held by fixed microwave incumbents to "secondary status" immediately upon the expiration of the mandatory negotiation period. To the extent the Commission adopts this proposal it should re-emphasize that microwave licensees whose licenses are "secondary" shall not create interference to and must accept interference from PCS licensees.

The foregoing proposal does not work a hardship on microwave licensees. Once a relocation negotiation between a PCS licensee and a microwave licensee begins, the parties know that relocation is an inevitable outcome. The negotiation simply becomes a procedure to arrive at mutually acceptable reasonable compensation for the relocation. To the extent there is a dispute between the PCS licensee and the microwave incumbent on the magnitude of compensation, the issue will ultimately be resolved by the Commission.

Adoption of the proposed clarifications would benefit all parties involved. PCS licensees would benefit by knowing that on a date certain they will have access to spectrum they need in order to deploy viable PCS systems. It also would help to ensure that PCS licensees will be able to meet the Commission's aggressive build out rules in a timely fashion.

Microwave incumbents would benefit by contracting for and building replacement facilities they believe are comparable to those being replaced. Further, microwave incumbents can rely on the fact the FCC will make a judgment on the reasonableness of the costs for which they should be reimbursed if they can not agree with PCS licensees on that subject.

Because, under this proposal, comparable microwave facilities will have been deployed by incumbents by the end of the 3 year period and PCS licensees will be able to deploy base station facilities to provide service to subscribers, the FCC will benefit since it will not be under time pressure to render decisions on what constitutes reasonable compensation. It will be able to more carefully evaluate the claims of those parties who were unable to negotiate relocation agreements during the voluntary/mandatory negotiation period knowing that the administrative process cannot be used to delay

relocation or the deployment of PCS services.

Respectfully submitted,

AT&T Wireless Services, Inc.

By: John Thompson
John Thompson
Senior Vice President

BellSouth Personal Communications

By: Eric F. Ensor
Eric F. Ensor
President

GTE Mobilnet

By: W.E. Pallone
W.E. Pallone
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PCS PrimeCo, L.P.

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By: _____
Daniel C. Riker
Chairman and Chief Executive Officer

Pacific Bell Mobile Services

By: James P. Tuthill
James P. Tuthill
Vice President

cc: Roz Allen
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Karen Brinkmann
Jackie Chorney
David Siddall
Suzanne Toller

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